

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

TRACK 2 SETTLEMENT

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**CLASS COUNSEL’S MOTION TO STRIKE EXHIBIT A TO DON HAVILAND’S
OMNIBUS OBJECTION OF NAMED CONSUMER PLAINTIFFS IN OPPOSITION TO
APPROVAL OF THE PROPOSED TRACK TWO NATIONWIDE CLASS
CERTIFICATION AND SETTLEMENT**

Class Counsel respectfully move this Court for an order striking Exhibit A to Don Haviland’s Omnibus Objection of Named Consumer Plaintiffs in Opposition to Approval of the Proposed Track Two Nationwide Class Certification and Settlement (“Haviland Omnibus Objection”) (Dkt. No. 7556).¹ The grounds for this Motion are as follows:

1. As the Haviland Omnibus Objection acknowledges, on March 24, 2009, after Class Counsel filed an appropriate motion, this Court struck Haviland’s 72-page objection to the Track 2 Settlement. *See* Dkt. No. 5957 (motion to strike), discussed at Haviland Omnibus Objection, ¶¶ 3, 4.

2. Despite acknowledging this turn of events, Haviland filed *his stricken brief* as Exhibit A to his Omnibus Objection.

¹ The title of Haviland’s Objection is also misleading. His clients are not the Court-appointed representatives for the Track 2 Settlement. Indeed, this Court recently reiterated that Haviland’s clients withdrew from this litigation in August 2007. *See* Ex. A (Mar. 28, 2011 Tr. at 41:1-7) (“That’s what I remember. Now, it may be that we didn’t cross the T and dot the I. I deemed that a withdrawal. Now, maybe I should have issued an order deeming them no longer class reps, but, you know, no one asked me to and I didn’t do it. But I remember at the time distinctly believing, because I remember there was then a problem with the class, and I said, “Can you find someone else?”).

3. Because his stricken brief is no longer part of the record, the Court should strike it and order Haviland to replace it with the 30-page revised objection, Docket Number 5971.

WHEREFORE Class Counsel respectfully request that this Court enter an order striking Exhibit A to the Haviland Omnibus Objection, and all other relief that this Court deems just and appropriate.

DATED: May 26, 2011

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Class Counsel

CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on May 26, 2011, I caused copies of **CLASS COUNSEL'S MOTION TO STRIKE EXHIBIT A TO DON HAVILAND'S OMNIBUS OBJECTION OF NAMED CONSUMER PLAINTIFFS IN OPPOSITION TO APPROVAL OF THE PROPOSED TRACK TWO NATIONWIDE CLASS CERTIFICATION AND SETTLEMENT** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

_____/s/ Steve W. Berman
Steve W. Berman

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE:)
) CA No. 01-12257-PBS
PHARMACEUTICAL INDUSTRY AVERAGE)
WHOLESALE PRICE LITIGATION) Pages 1 - 91
)

BMS FINAL APPROVAL HEARING
BEFORE THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

United States District Court
1 Courthouse Way, Courtroom 19
Boston, Massachusetts
March 28, 2011, 2:17 p.m.

LEE A. MARZILLI
OFFICIAL COURT REPORTER
United States District Court
1 Courthouse Way, Room 7200
Boston, MA 02210
(617) 345-6787

1 THE COURT: That's what I remember. Now, it may be
2 that we didn't cross the T and dot the I. I deemed that a
3 withdrawal. Now, maybe I should have issued an order deeming
4 them no longer class reps, but, you know, no one asked me to
5 and I didn't do it. But I remember at the time distinctly
6 believing, because I remember there was then a problem with the
7 class, and I said, "Can you find someone else?" Wasn't that
8 how this all evolved? I remember thinking that that might
9 undercut the whole class action, and I think I deemed it, and I
10 think no one disabused me of it, as a withdrawal that might
11 undermine the viability of the class.

12 MR. HAVILAND: Well, I don't think anybody got that
13 from you, Judge. I certainly didn't. What happened was --

14 THE COURT: Well, they must have because they went out
15 and got someone else.

16 MR. HAVILAND: Well, I continued as class counsel up
17 until the point you disqualified me three months after I
18 appeared in front of you in January of 2008, I believe it was.

19 THE COURT: That's probably because it took me so long
20 to write the opinion, but three months, two or three months or
21 whatever.

22 MR. HAVILAND: Well, it was a quick opinion. And in
23 the interim I was continuing to represent the consumers. I
24 took the appeal of Johnson & Johnson on behalf of Shepley, and
25 your Honor pointed out, "Boy, I wish someone had pointed out to